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February 13, 2003

## VIA FACSIMILE AND OVERNIGHT MAIL

Mr. Nabil Fayoumi  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard, SR-6J  
Chicago, IL 60604-3590

**Re: Sauget Area 2 Site – Groundwater Operable Unit, Sauget, Illinois  
Unilateral Administrative Order  
Docket No. V-W-02-C-716**

Dear Mr. Fayoumi:

We represent Phelps Dodge Corporation and Cyprus Amax Minerals Company. On or about October 16, 2002, the U.S. Environmental Protection Agency ("EPA") issued the above-referenced Order to Phelps Dodge Corporation alleging that Phelps Dodge Corporation is a successor to Cyprus Amax Minerals Co. and Amax Zinc. This allegation is not correct. Cyprus Amax Minerals Company is a successor to Amax Zinc, but Phelps Dodge Corporation is not a successor to either Cyprus Amax Minerals Co. or Amax Zinc. Cyprus Amax Minerals Company is a subsidiary of Phelps Dodge Corporation. Phelps Dodge Corporation has not conducted any activity to make it directly or indirectly liable under the Order. Accordingly, we provide the following response to the Order on behalf of Cyprus Amax Minerals Company.

Pursuant to Paragraph 99 of the above-referenced Order, Cyprus Amax Minerals Company ("Cyprus") provides notice of its intent to comply with the terms of the Order. Cyprus has been negotiating in good faith with Solutia to either participate with it in complying with the order or settle any alleged liability associated with the order. Cyprus has made individual settlement offers to Solutia and has joined with other parties in making group offers. Solutia has not shown interest in individual offers, asserting that it would prefer to negotiate with the non-Solutia group. Solutia has not responded to the group's most recent offer to participate. Cyprus will continue to work towards an individual or group participation agreement with Solutia. All parties, including Solutia, have agreed that Cyprus' alleged liability is very small (less than 1%). Thus, it would be unreasonable for Cyprus to comply with the order solely on its own. Cyprus is willing to discuss a direct settlement with EPA, such as a payment towards EPA's past costs, if it cannot reach a participation agreement with Solutia.

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Although Cyprus provides this notice of intent to comply with the Order, Cyprus hereby reserves any and all sufficient cause defenses to liability under the Order should EPA allege non-compliance with the Order. These defenses include, but are not limited to the following: (1) EPA has issued the Order to the wrong party (Phelps Dodge Corporation is not a successor to Cyprus Amax Minerals Co. or Amax Zinc); (2) Cyprus has not contributed the hazardous substances identified in the Order to any of the sites identified in the Order; (3) any hazardous substances Cyprus may have contributed to the sites identified in the Order are not being addressed by the Interim Groundwater Remedy described in the Order; (4) Cyprus is not a substantial contributor of hazardous substances to the sites identified in the Order; and (5) the Interim Groundwater Remedy described in the Order is not consistent with the National Contingency Plan.

If you have any questions regarding this notice, please call me at (602) 530-8136.

Very truly yours,

GALLAGHER & KENNEDY, P.A.

By:   
David L. Wallis

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1081267/25100-0507

cc: Thomas Martin, Esq.  
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